IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No.550/2007
(Madhukar M. Mohurle & 6 others ..vs.. Namdeo K. Giradkar & 4 others)

with
Second Appeal No. 597/2007
(Namdeo K. Giradkar and others ..vs.. Madhukar M. Mohurle & others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Shri S. P. Bhandarkar, Advocate for appellants in S. A. No. 550/2007
Shri S. R. Deshpande, Advocate for appellant in S. A. No. 597/2007

CORAM : B. P. DHARMADHIKARI, J.
DATED : 05/12//2007

Heard counsel for the parties.

The appellants challenge the judgment dates 23/10/2007 delivered by the District Judge, Chandrapur in Misc. Civil Application No. 46/2003. The appellants in second appeal No. 550/07 are reporting Trustees, who filed change report under Section 22 of the Bombay Public Trusts Act, pointing out that the elections were held on 30/5/1999 and various office bearers were elected to the executive committee that consists of 11 persons.

Three appellants in the second appeal No. 597/2007 filed objections to that change report contending that there was no election and entire records are fabricated. It is to be noted that these elections were for the period 1999 to 2004.

The Assistant Charity Commissioner after permitting parties opportunity to lead evidence and after hearing arguments accepted the change report. The three objectors filed appeal under Section 70 of the Bombay Public Trusts Act before the Joint Charity Commissioner, Nagpur and Joint Charity Commissioner by his judgment dated 10/1/2003 rejected that appeal. These concurrent orders were then further challenged by the objectors by filling appeal under Section 72(1) of the Bombay Public Trusts Act registered as Misc. Civil Application No. 46 of 2003 before the District Judge, Chandrapur. The District Judge, Chandrapur has allowed their appeal, District Judge has directed Assistant Charity Commissioner to hold elections of Public Trusts within a period of 90 days.

In Second Appeal No. 550/1997, Advocate Bhandarkar for reporting Trustees and the newly elected persons in 1999 contends that the order is contrary to law. However his basic contention is that as the present appellants have resumed charge of their office in 1999 itself, they can not now be substituted by the body recorded in **schedule-I** for period of 90 days till the new body is elected as per directions of District Judge. It appears from the submissions of Advocate Bhandarkar that as the tenure of body elected in 1999 is also over, the said appellants are not averse to fresh elections. Their only interest seems to be that as they have continued to hold the office for all these years, the old body which did not function for last

about 8 years, should not now be reinstated. Advocate Bhandarkar contends that the view that body recorded in Schedule-I is only entitled to manage/administer the affairs of the Trusts is not correct because the change report is always filed after elections are held and its adjudication at various levels always takes period of 7-8 years within which such elected body takes over. He contends that in such circumstances, in view of doctorine of de facto trustees, the importance given to de-jure concept is not correct. He wants to argue the matter further. He has also filed on record undertaking of all the existing Committee Members, who have been elected in 1999 to the effect that they would hand over the charge to the newly elected body forthwith after Assistant Charity Commissioner declares results of election. Advocate Bhandarkar points out that this undertaking is given only to facilitate smooth change over and continuation of the affairs and administration of the Public Trusts.

Advocate S.R. Deshpande for respondents in Second Appeal No.550/2007 and for appellants in Second Appeal No.597/2007 contends that the objectors before Assistant Charity Commissioner had specifically pointed that there were 22 members entitled to participate in the elections of Executive Committee. Those elections, therefore, ought to have been conducted from amongst 22 members. He states that the Assistant Charity Commissioner did not frame any issue, did not permit

parties to lead any evidence holding he has no jurisdiction while adjudicating the change report proceedings, to consider dispute about the membership. He contends that in these circumstances, when the District Judge has for the first time allowed the appeal of objectors, he could not make observation which indicates that there were only 13 valid members in 1999 when the alleged elections were held. He contends these observations of District Judge on one hand closed further door for adjudication for present appellants in S. A. No. 597/2007 and at the same time are without any jurisdiction as the Assistant Charity Commissioner has himself recorded that under Section 22 proceedings, he could not have gone into that aspect. He further states that though the Assistant Charity Commissioner has recorded that there were no pleadings before him by the present appellants (objectors) about the membership issue, along with objection register showing the names of 22 members was produced. He, therefore, states that he wants Assistant Charity Commissioner to decide issue of membership before undertaking the process of elections.

In reply to arguments advanced in Second Appeal No. 550/2007, he argues that in view of observation by the District Judge about alleged elections conducted in 1999, the appellants therein should not be allowed to administer the affairs of the Trusts for a single day. He contends that their undertaking should also be ignored. He further argues

that if this Court is inclined to continue them, in the meanwhile till elections of new body, proper care should be taken to see that they do not act or cause prejudice to Trusts in any way.

Advocate Bhandarkar while replying to the argument of Advocate Deshpande and also while replying argument advanced in Second Appeal No. 597/2007 contends that the eight appellants in Second Appeal No. 597/2007 were never parties till this stage and never raised any grievance about their alleged membership. He further states that the Assistant Charity Commissioner has rightly found that he could not have gone into the aspect of disputed membership under Section 22 proceedings and he further points out that the Assistant Charity Commissioner also remarked that there was no contention and evidence before him to record any finding about such dispute.

After hearing both the counsel, I find that the question whether the body which has lost its legal character to continue in office in 1999 on account of expiry of terms after 1999 till today can be reinstated in the present position, is the substantial question of law which arises in Second Appeal No. 550/2007.

In Second Appeal No. 597/2007, I find that whether the learned District Judge was right in making any observations about disputed issue of member ship when proceedings under Section 22 the Assistant Charity Commissioner could not have taken cognizance of that

aspect is a substantial question of law.

After hearing both sides and after perusing orders passed by learned District Judge, I find that learned District Judge has found very serious defects in the alleged process of elections undertaken by the appellants in Second Appeal No. 550/2007. The learned District Judge has found that the elections programme was not published, no nomination papers were called, voters list was not published and elections were not held for 11 posts. He has also found that the proceedings of elections have been fabricated and anti-dated. There are certain other observations but in view of course which I am adopting with consent of both counsel and in the interest of public trusts, I do not find it necessary to dwell more on that aspect.

Insofar as three appellants in S.A.No.597/2007 are concerned, they were objectors in change report proceedings filed at the instance of appellants in S. A. No. 550/2007. These appellants had also submitted the change report pointing that after 1999 some elections have taken place and they have been elected. That change report is still pending.

In the present situation, these appellants representing two rival groups in public trusts are leaving no stones unturned to come into the power. I, therefore, find that view taken by the District Judge that the elections should be held by some independent Authority is just & fair. The appellants in Second Appeal No. 550/2007 have

also filed their undertaking stating that they will immediately hand over the charge to the newly elected body after declaration of result by Assistant Charity Commissioner in such elections. In these circumstances, I find that the Assistant Charity Commissioner can be permitted to complete the process of elections and the appellants in S.A.No.550/2007 shall handover the charge forthwith after declaration of results of election to newly elected executive and such newly elected executive shall thereafter run the administration and manage the affairs of the Trust. I find that a body which has lost its tenure in 1999 need not be reinstated after expiry of 8 years and the present appellants in appeal No. 550/2007, who are continuing to manage and administer affairs of the trust for last about 8 years, should be allowed to manage of trust for further period. However, during this period or tenure, they shall not take any policy decision or any financial decision and they will only look after the routine day-to-day work of the trust. They shall not act in a manner which will cause prejudice to the affairs and interest of the trust.

The Assistant Charity Commissioner shall before undertaking the process of elections look into the dispute of membership also because total maximum members of trust from the arguments of parties appear to be not more than 22. It is, therefore, clear that the Assistant Charity Commissioner can inquire into such dispute and take a decision within a period of one month and thereafter

proceed further with the elections process.

Learned Assistant Government Pleader states that the period of 90 days given to Assistant Charity Commissioner was to run from 23/10/2007 and the said period should be extended accordingly. In the interest of justice, the period of 90 days to complete process of elections after enquiry into disputed aspect of membership is hereby extended and the said period of 90 days shall be from tomorrow i.e. 6/12/2007. During this period, the Assistant Charity Commissioner shall find out whether the membership of Trust is only 13 or 22 in accordance with law. Thereafter he shall proceed further to hold elections and complete the process of election within a period of 90 days from today as mentioned above.

It is made clear that all the seven appellants in Second Appeal No. 550/2007 shall continue to administer the affairs of the Trust for this period of 90 days, subject to restrains or fetters placed upon their power as above. In view of this orders, I find that the substantial questions of law which arise in these appeals need not be considered in these matters. The second appeals are accordingly disposed of.

Civil Application No. 8882/2007 in S. A. No.597/07

The eight persons, who were neither objectors nor parties in proceedings before the lower authorities are seeking permission to file second appeal alongwith three appellants in

S. A. No. 597/2007.

In view of orders already passed as above, the said leave is rejected.

The application is disposed of.

JUDGE.

Jsa